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**Michael Sim Hang Chuang v
Syarikat Sri Pusa & Ors**HIGH COURT (MIRI) — ORIGINATING SUMMONS NO MR9 OF 1995
HASAN JC

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29 FEBRUARY 2000

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Partnership — Retirement of partner — Whether proved — Oral agreement to retire, whether sufficient — Meaning of 'written document' in s 28 of Partnership Act 1961, whether include registration certificate issued under Business Names Ordinance of Sarawak — No notification of retirement in accordance with s 9 of Business Names Ordinance of Sarawak — Whether oral agreement to retire invalidated — No consideration for retirement paid — 'Retired' partner still registered as partner of firm — Whether 'retired' partner should still be considered partner of firm — Whether verbal notice of retirement binds third party — Partnership Act 1961 s 38(1)

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In November 1977, the plaintiff and the second and third defendants formed a partnership (the first defendant) registered under the Business Names Ordinance of Sarawak ('the Ordinance'). The plaintiff alleged that on 13 November 1985, the second and third defendants called for a meeting whereby the plaintiff was offered RM150,000 to retire from the partnership. The plaintiff accepted the offer but the money has not been paid to him until today and in the Business Registry the plaintiff is still the registered partner of the first defendant. On 28 November 1985, the first defendant entered into an equipment lease agreement with the fourth defendant. Subsequently, the fourth defendant sued the first defendant under the equipment lease agreement. Having obtained judgment in default against the first defendant, the fourth defendant then instituted bankruptcy proceedings against the plaintiff. The plaintiff alleged that the fourth defendant had full and adequate knowledge of his retirement from the partnership by virtue of verbal notice given by the plaintiff and exh P1, ie letter dated 26 November 1985 in which the plaintiff stated that he would be retiring from the partnership. The plaintiff filed an application seeking for a declaration that he had since 13 November 1985 retired as a partner from the partnership. Further and/or alternatively for an order that the plaintiff's name be struck off and/or deleted from being named as a partner of the first defendant in the bankruptcy proceedings. The first, second and third defendants submitted that the plaintiff had not retired from the partnership as the plaintiff had not complied with s 9 of the Ordinance and s 28(2) of the Partnership Act 1961. The fourth defendant submitted that it was entitled to rely on the register when it had not receive a fresh notice of change or fresh business extract from the plaintiff that his name as a partner had been deleted from the Business Name Register.

Held:

- (1) The court found on the balance of probabilities that the plaintiff had proved that the plaintiff and the second and third defendants

had agreed on 13 November 1985 that the plaintiff would retire from the partnership and that the plaintiff had agreed to receive RM150,000 as a consideration for his retirement (see p 196E–F).

- (2) The words ‘written document’ stated in s 28 of the Partnership Act 1961 means a written agreement relating to the formation of the partnership but does not include the Registration Certificate issued under the Ordinance. In the circumstances, it would be a sufficient compliance with s 28 of the Partnership Act if the plaintiff had informed the other partners orally that he intend to determine the partnership (see p 197G–H).
- (3) As regards s 9 of the Ordinance, the purpose of the registration is to inform the public who are the partners of the partnership concerned. Section 9 does not concern with the internal arrangement of the partnership. Therefore the non-compliance of the requirement under s 9 would not invalidate the agreement made by the plaintiff and the second and third defendants (see p 198A–B).
- (4) A declaration is a discretionary remedy and therefore it does not follow that just because the plaintiff was able to establish that there was an agreement made between him and the other partners for him to retire from the firm, he would be entitled to the declarations he sought for (see p 198C–D).
- (5) The consideration of RM150,000 was not paid until today and there was no transfer of the plaintiff’s share in the firm to the other two partners until today. The plaintiff is still one of the registered partners of the firm until today. As such, the plaintiff has not ceased to be the partner in the first defendant partnership until today (see p 198E–F).
- (6) The fourth defendant were entitled to act upon the assumption that the particulars in the Business Registry were correct unless and until they received express notice to the contrary. Whatever agreement or arrangement made by the partners between themselves were merely an internal arrangements and they could not bind the persons from outside the firm (see p 200A–B).
- (7) There was no evidence to support the plaintiff’s allegation that he has given a verbal notice to the fourth defendant of his retirement from the partnership before the signing of the equipment lease agreement. In any event, a verbal notice did not constitute a sufficient notice to the fourth defendant, as the fourth defendant was a company and financial institution. Any notice given to the fourth defendant must be in writing (see pp 201H–202B).
- (8) Exhibit P1 did not constitute an unequivocal notice that the plaintiff had retired from the defendant. In addition, his share in the first defendant has not been transferred to the other partners until today. Therefore when the equipment lease agreement was signed, the fourth defendant had not been informed by the

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- A** plaintiff that he had ceased to be a partner of the first defendant. By virtue of s 38(1) of the Partnership Act 1961, the fourth defendant was entitled to treat the plaintiff as still being members of the first defendant because exh P1 could not be regarded as notice of the change in the first defendant's constitution. In addition, the notice of change must be accompanied by a new business extract showing the changes (see p 202E-H).
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[Bahasa Malaysia summary]

- C** Pada bulan November 1977, plaintif dan defendan kedua dan ketiga telah membentuk suatu perkongsian ('defendan pertama') yang didaftarkan di bawah Ordinan Nama Perniagaan Sarawak ('Ordinan tersebut'). Plaintif mendakwa bahawa pada 13 November 1985, defendan kedua dan ketiga telah mengadakan suatu mesyuarat di mana plaintif ditawarkan RM150,000 untuk bersara dari perkongsian tersebut. Plaintif menerima tawaran tersebut tetapi wang tersebut tidak dibayar kepadanya sehingga hari ini dan dalam Daftar Perniagaan plaintif masih disenaraikan sebagai rakan kongsi berdaftar defendan pertama. Pada 28 November 1985, defendan pertama telah mengikat suatu perjanjian pajakan peralatan dengan defendan keempat. Berikutnya, defendan keempat mendakwa defendan pertama di bawah perjanjian pajakan peralatan tersebut. Setelah memperoleh penghakiman ingkar terhadap defendan pertama, defendan keempat kemudiannya memulakan prosiding kebangkrapan terhadap plaintif. Plaintif mendakwa bahawa defendan keempat mempunyai maklumat sepenuhnya dan memadai tentang persaraannya daripada perkongsian tersebut disebabkan notis lisan yang diberikan oleh plaintif dan eksh P1, iaitu sepucuk surat bertarikh 26 November 1985 dalam mana plaintif menyatakan bahawa beliau akan bersara dari perkongsian tersebut. Plaintif memfailkan permohonan meminta suatu perisytiharan bahawa beliau telah bersara sebagai seorang rakan kongsi daripada perkongsian tersebut sejak 13 November 1985; seterusnya dan/atau secara alternatif untuk satu perintah bahawa nama plaintif dipangkah dan/atau dibatalkan sebagai seorang rakan kongsi defendan pertama dalam prosiding kebangkrapan. Defendan-defendan pertama, kedua dan ketiga berhujah bahawa plaintif belum bersara dari perkongsian tersebut kerana plaintif tidak mematuhi s 9 Ordinan tersebut dan s 28(2) Akta Perkongsian 1961. Defendan keempat berhujah bahawa ia berhak bergantung pada daftar memandangkan ia tidak menerima notis penukaran baru atau ekstrak perniagaan yang baru daripada plaintif bahawa namanya sebagai seorang rakan kongsi telah dibatalkan daripada Daftar Nama Perniagaan.
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Diputuskan:

- I** (1) Mahkamah mendapati berdasarkan imbalan kebarangkalian bahawa plaintif telah membuktikan bahawa plaintif dan defendan kedua dan ketiga telah bersetuju pada 13 November 1985 bahawa

- plaintif akan bersara daripada perkongsian tersebut dan bahawa plaintif telah bersetuju untuk menerima RM150,000 sebagai balasan untuk persaraannya (lihat ms 196E–F). **A**
- (2) Perkataan-perkataan ‘dokumen bertulis’ yang dinyatakan dalam s 28 Akta Perkongsian 1961 bermaksud suatu perjanjian bertulis yang berkaitan dengan pembentukan perkongsian tersebut tetapi tidak termasuk Sijil Pendaftaran yang dikeluarkan di bawah Ordinan tersebut. Dalam keadaan begitu, s 28 Akta Perkongsian dipatuhi dengan secukupnya sekiranya plaintif telah memberitahu rakan-rakan kongsi lain secara lisan bahawa beliau berhasrat menamatkan perkongsian tersebut (lihat ms 197G–H). **B**
- (3) Berhubung dengan s 9 Ordinan tersebut, tujuan pendaftaran adalah untuk memberitahu masyarakat awam siapakah rakan kongsi perkongsian berkenaan. Seksyen 9 tidak berkaitan dengan susunan dalaman perkongsian tersebut. Maka ketidakpatuhan keperluan di bawah s 9 tidak akan menyebabkan perjanjian yang dibuat oleh plaintif dan defendan kedua dan ketiga menjadi tidak sah (lihat ms 198A–B). **C**
- (4) Perisytiharan adalah suatu remedi yang berdasarkan budi bicara dan dengan itu ia tidak bermakna bahawa semata-mata kerana plaintif berjaya membuktikan bahawa wujudnya suatu perjanjian di antara pihaknya dengan rakan kongsi lain untuk bersara daripada firma tersebut beliau berhak memperolehi perisytiharan yang dipohonnya (lihat ms 198C–D). **D**
- (5) Balasan sebanyak RM150,000 tidak dibayar sehingga hari ini dan tiada pemindahan ke atas bahagian plaintif dalam firma tersebut kepada dua rakan kongsi lain sehingga hari ini. Plaintif masih merupakan salah seorang rakan kongsi berdaftar firma tersebut sehingga hari ini. Oleh yang demikian, plaintif belum lagi berhenti menjadi rakan kongsi dalam perkongsian defendan pertama sehingga hari ini (lihat ms 198E–F). **E**
- (6) Defendan keempat berhak bertindak atas anggapan bahawa butir-butir dalam Daftar Perniagaan adalah betul melainkan dan sehingga mereka menerima notis nyata yang sebaliknya. Barang apa pun perjanjian atau susunan yang dibuat oleh rakan-rakan kongsi sesama sendiri cumalah susunan dalaman dan tidak boleh mengikat pihak-pihak luar daripada firma tersebut (lihat ms 200A–B). **F**
- (7) Tiada keterangan untuk menyokong tohmahan plaintif bahawa ia telah memberikan notis lisan kepada defendan keempat tentang persaraannya dari perkongsian tersebut sebelum perjanjian pajakan peralatan ditandatangani. Walau bagaimanapun, notis lisan tidak merupakan notis yang mencukupi kepada defendan keempat, kerana defendan keempat adalah sebuah syarikat dan institusi kewangan. Sebarang notis yang diberikan kepada defendan keempat mestilah dalam bentuk bertulis (lihat ms 201H–202B). **G**
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- A (8) Ekshibit P1 tidak merupakan suatu notis yang nyata bahawa plaintif telah bersara dari firma defendan. Tambahan pula, bahagiannya dalam defendan pertama tidak dipindah kepada rakan kongsi lain sehingga hari ini. Oleh itu, apabila perjanjian pajakan peralatan tersebut ditandatangani defendan keempat tidak diberitahu oleh plaintif bahawa beliau telah berhenti menjadi seorang rakan kongsi defendan pertama. Disebabkan s 38(1) Akta Perkongsian 1961, defendan keempat berhak menganggap plaintif masih seorang ahli defendan pertama kerana eksh P1 tidak boleh dianggap sebagai notis penukaran dalam keahlian defendan pertama. Tambahan pula, notis penukaran mestilah diiringi oleh ekstrak perniagaan baru yang menunjukkan penukaran (lihat ms 202E-H).]
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Notes

- D For a case on retirement of a partner, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) para 904.

Cases referred to

- Chop Yew Seong, Re; ex p Sri Sundari Palayakat Co* [1958] 2 MLJ 239 (refd)
- E *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1988] 3 MLJ 82 (refd)
- Sivagami Achi v PRM Ramanathan Chettiar & Anor* [1959] MLJ 221 (refd)
- Tan Sin Moh v Lebel Ltd* [1988] 2 MLJ 51 (refd)

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Legislation referred to

Business Names Ordinance of Sarawak (Cap 64) s 9
Partnership Act 1961 ss 11, 28(2), 38(1)
Registration of Businesses Act 1956 s 6

- G *Tai Choi Yu (Tai Choi Yu & Co)* for the plaintiffs.
Musa Dinggat (Musa Dinggat & Co) for the first, second and third defendants.
Dominic Lai (Dominic Lai & Co) for the fourth defendant.

Cur Adv Vult

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Hasan JC: This action arose from an originating summons filed by the plaintiff against the four defendants which was ordered to be converted into a suit.

- In support of the originating summons, the plaintiff filed his own affidavit affirmed on 9 February 1995 and his sister's affidavit, Stellawati Abdullah @ Sim Chee Boi, affirmed on 29 July 1995. In opposing the originating summons, the defendants collectively filed four affidavits, namely:
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- (1) the affidavit of the second defendant affirmed on 27 May 1995;
- (2) the affidavit of Eric CS Khoo affirmed on 3 July 1995;
- (3) the two affidavits of Henry Tiong Teck Wong affirmed on 30 July 1995 and 28 August 1995.

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By this originating summons the plaintiff is seeking for the following reliefs:

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- (1) a declaration that the plaintiff had since 13 November 1985 retired as a partner from the partnership of the first defendant;
- (2) further and/or alternatively for an order that the plaintiff's name be struck off and/or deleted from being named as a partner of the first defendant in Bankruptcy Proceedings No MR 26 of 1992 filed in the Miri High Court Registry,
- (3) general damages;
- (4) such other reliefs that this court deems fit; and
- (5) costs incidental to and occasioned by this application.

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During the trial the plaintiff called altogether five witnesses, namely PW1, the plaintiff; PW2, Tan Jim Kok, the first defendant's accountant; PW3, Eric CS Khoo, the legal advisor of the first defendant; PW4, Stellawati Abdullah @ Sim Chee Boo who is the plaintiff's sister and was the Manager of the first defendant in charge of all the administrative matter; PW5, Henry Tiong Teck Wong who was the fourth defendant's Manager, Miri Branch at the relevant time. The second and third defendants gave evidence for the first to third defendants whereas the fourth defendant elected not to call any witness to give evidence on its behalf.

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The facts of the case are quite straightforward and may be stated as follows. On or about 24 November 1977, the plaintiff, the second and third defendants formed and/or registered a partnership known as Syarikat Sri Puspas, the first defendant, with the plaintiff holding 30% and the second and third defendants at 40% and 30% each of the shares of the said partnership respectively. The said partnership was registered under the Business Names Ordinance of Sarawak (Cap 64) vide Registration Certificate No 236/77.

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The purpose of the said partnership was for 'General Contracts & Trading'. The partnership's main business was to do contract works from Sarawak Shell Bhd.

The plaintiff put up the initial capital of RM50,000 and the second and third defendants were given free shares in accordance with the percentage as aforesaid. Sometime in 1985 a shophouse in Miri in the name of the second defendant was charged to a local bank in favour of the first defendant for accommodation by way of overdraft to the sum of RM300,000. The first defendant commenced business on or about the 1 December 1982 and it was managed administratively by Stellawati Abdullah who was also the wife of Abdul Wahab at the relevant time. Abdul Wahab is the son of the second defendant and he was employed by the Sarawak Shell Berhad. He assisted the first defendant by divulging to the

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A said partnership privileged information regarding the imminent anticipated contracts offered by the said Sarawak Shell Berhad.

B The plaintiff alleged that from 1982 onwards the first defendant was run exclusively by the said Abdul Wahab himself and/or with the consent and/or connivance of the second and third defendants. The plaintiff further alleged that the said Abdul Wahab with the consent and/or connivance of the second and third defendants on the pretext that they wanted the said partnership to be 100% bumiputra firm called him to a meeting at the office of M/s Khoo & Co on 13 November 1985 in respect of his retirement from the said partnership. The meeting was attended by the third defendant with the said Abdul Wahab representing the second defendant, Stellawati bte Abdullah and Mr Eric Khoo, the legal advisor. According to the plaintiff at the said meeting the said Abdul Wahab with the consent or connivance of the second and third defendants offered to pay him RM150,000 to retire from the said partnership. He accepted the said offer but the money has not been paid to him until today.

D The first defendant and the fourth defendant entered into the equipment lease agreement No DL/M/1185/214 dated 28 November 1985. The lease agreement was signed by the second and third defendants for and on behalf of the first defendant and Mr Henry Tiong Teck Wong for and on behalf of the fourth defendant.

E The plaintiff also alleged that the fourth defendant had full and adequate knowledge of his retirement from the said partnership because a week before the date of execution of the said lease agreement, Mr Henry Tiong Teck Wong telephoned him to set up an appointment to sign the said lease agreement. According to the plaintiff he refused to sign and/or execute the said lease agreement as requested. The plaintiff alleged that the fourth defendant then prepared a new lease agreement which was subsequently executed by the second and third defendants for and on behalf of the first defendant without his knowledge or consent. The plaintiff also alleged that on or about 20 January 1986 he wrote a letter to both the fourth defendant and Bank Bumiputra Malaysia Bhd, Miri informing them that he had retired and/or withdrawn from the said partnership. The letter was handed by him personally to Mr Henry Tiong Teck Wong.

G Subsequently the fourth defendant had sued the first defendant and two others under the said equipment lease agreement vide High Court Civil Suit No MR3 of 1991. Having obtained judgment in default against the first defendant the fourth defendant then instituted bankruptcy proceedings against the plaintiff under Bankruptcy Proceedings No MR 26 of 1992.

H The plaintiff also alleged that the fourth defendant with full knowledge of the plaintiff's retirement from the partnership refrained from naming him as a defendant in the said High Court Suit No 3 of 1991.

I The amount of RM150,000 has not been paid by the second and third defendants to the plaintiff and in the business registry the plaintiff is still the registered partner of the first defendant.

The defendants deny the allegation made by the plaintiff and state that the plaintiff has not to this day retired from the firm of Syarikat Sri Puspa.

The learned counsel for the plaintiff submits that in respect of the plaintiff's claim against the first, second and third defendants the issues to be decided are as follows:

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(a) Whether there exist an oral agreement for withdrawal or retirement at the meetings on 13 November 1985 in the offices of Tan Jin Kok and/or Eric Khoo or alternatively whether there was a written agreement for withdrawal or retirement embodied in the letters issued by the parties culminating on the first, second and third defendant's final letter dated 25 February 1986 addressed to Messrs TJK Taxation & Management Service Sdn Bhd?

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(b) Whether under and by virtue of the doctrine of promissory estoppel the first, second and third defendants are estopped from denying that the plaintiff had withdrawn or retired from the partnership? Or alternatively whether the partnership relation exists between the parties under the law on agency?

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As regards issue (a), the learned counsel for the plaintiff submits that a concluded agreement of withdrawal by the plaintiff from the partnership had been entered between the parties on 13 November 1985 at the meetings at the offices of Tan Jin Kok and Eric Khoo. It is the contention of the learned counsel for the plaintiff that the fact that the said consideration of RM150,000 has yet to be paid or that no formal documents had been drawn or executed by the parties does not alter or vary the fact of the existence of the said agreement.

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I have carefully considered the evidence adduced by the parties and it is my finding that on the balance of probabilities the plaintiff has proved that the plaintiff, the second defendant and the third defendant had agreed on 13 November 1985 that the plaintiff would retire from the partnership and he had agreed to receive RM150,000 as a consideration for his retirement from the partnership. The plaintiff's evidence on this matter has not been seriously challenged by the defendants. Furthermore the plaintiff's evidence was corroborated by the evidence of PW2 and PW3 and exh P2. PW2 in his evidence stated that the second and third defendants together with Abdul Wahab came to his office and informed him that they would be restructuring the partnership of the first defendant and during the discussion they offered the plaintiff RM150,000. PW3 in his evidence testified that a meeting was held at his office on 13 November 1985 which was attended by the third defendant, the second defendant's son, Abdul Wahab and the plaintiff. He also confirmed about the consideration of RM150,000 for the plaintiff's retirement from the partnership.

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Exhibit P2 is a letter by the first defendant to TJK Taxation & Management Services Sdn Bhd dated 25 February 1986. The letter was signed by the second and third defendants for and on behalf of the first defendant. Paragraph 5 of the said letter states:

We have discussed with our legal advisor 'Khoo & Co', regarding the withdrawal of one of our existing partner Mr Sim Hang Chuang and provided we settled his demand ie release of his 30% share at M\$150,000 on

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- A** installment basis which we have agreed and upon signing of the withdrawal letter/agreement the above account/financial statement by you would be strictly the properties of Syarikat Sri Puspa.

- B** The learned counsel for the first, second and third defendants contends that the plaintiff had not retired from the said partnership as the plaintiff had not complied with the requirement of s 9 of the Sarawak Business Names Ordinance and s 28(2) of the Partnership Act 1961. Section 9 of the Sarawak Business Names Ordinance requires any death or retirement of the partner to be notified to the registrar who shall make the necessary alteration to the register. According to the learned counsel such alteration to the register is mandatory and anybody who deals with the partnership can rely on the register. As regards s 28(2) of the Partnership Act the learned counsel for the first, second and third defendants submits that the plaintiff had not complied with the said provision because he had not given a notice in writing of his intention to retire from the partnership to the other partners, the second and third defendants. It is the contention of the learned counsel that the said s 28(2) is applicable to the first defendant as it was constituted by written document. According to the learned counsel the document it was constituted was its registration with the Registrar.

For ease of reference I reproduce the relevant provisions. Section 9 of the Sarawak Business Names Ordinance provides:

- E** When any partner in a firm dies or retires or when change occurs in any of the particulars specified in s 5, the same shall be notified to the Registrar within twenty one days of such change, and the Registrar shall make the necessary alterations in the register free of charge.

Section 28 of the Partnership Act provides:

- F** (1) When no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention to do so to all other partners.
- (2) Where the partnership has originally been constituted by written document a notice in writing, signed by the partner giving it shall be sufficient for this purpose.

- G** In respect of s 28(2) of the Partnership Act 1961, I am unable to agree with the submission by the learned counsel for the first, second and third defendants that that provision is applicable to the present case. It is my view that the words 'written document' stated in that provision means a written agreement relating to the formation of the partnership but does not include the Registration Certificate issued under the Sarawak Business Names Ordinance. In the circumstances I am of the view that it would be a sufficient compliance with s 28 of the Partnership Act if the plaintiff had informed the other partners orally that he intend to determine the partnership. I have already ruled that all the three partners of the first defendant had discussed and agreed that the plaintiff would withdraw from the partnership for a consideration of RM150,000. Hence it can be safely inferred that the plaintiff had complied with the requirement of s 28(1) of the Partnership Act.

As regards s 9 of the Sarawak Business Names Ordinance, I am of the view that the purpose of the registration is to inform the public who are the partners of the partnership concerned. A person who deals with the partnership can rely on the register. As such that s 9 does not concern the internal arrangement of the partnership. I am therefore of the view that the non-compliance of the requirement under s 9 of the Sarawak Business Names Ordinance will not invalidate the agreement made by the plaintiff and the second and third defendants.

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In view of my finding above, it is therefore unnecessary for me to consider the submission made by the learned counsel for the plaintiff under issue (b).

It is pertinent to note that in the present action the plaintiff is seeking a declaration that he had since 13 November 1985 retired as a partner from the partnership of the first defendant. A declaration is a discretionary remedy and therefore it does not follow that just because the plaintiff is able to establish that there was an agreement made between him and the other partners for him to retire from the firm he will be entitled to the declarations he sought for. In *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1988] 3 MLJ 82, Hashim Yeop A Sani SCJ (as he then was) made the observation at p 84 that:

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It is also an established principle consistently followed by our courts that the issuing of a declaration is discretionary. The power to issue a declaration should be exercised with circumspection with a proper sense of responsibility and ought not to be exercised unless the circumstances justify it.

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In the present case the partners had agreed on 13 November 1985 that the plaintiff would retire from the partnership for a consideration of RM150,000. The money was not paid until today and there was no transfer of the plaintiff's shares in the firm to the other two partners until today. The plaintiff is still one of the registered partners of the firm until today holding 30% of the total shares of the first defendant's partnership. As such it is my view that the plaintiff has not ceased to be the partner in the first defendant partnership until today. The plaintiff is seeking relief under s 9 of the Sarawak Business Names Ordinance as reflected in the intitlement and yet he has failed to comply with the same as he has not informed the registrar of his alleged retirement and his name is still in the register as one of the partners of the first defendant partnership.

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In addition the court has to consider whether the plaintiff is liable to the fourth defendant in respect of the equipment lease agreement entered by the first defendant with the fourth defendant on 28 November 1985. If the plaintiff is found to be liable to the fourth defendant as a partner of the first defendant in respect of the said equipment lease agreement the plaintiff will not be entitled to a declaration he is seeking for. I will now deal with the plaintiff's claim against the fourth defendant.

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As regards the fourth defendant the learned counsel for the plaintiff has submitted on the following issues:

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- (a) Whether registration as a partner under the Sarawak Business Names Ordinance is conclusive evidence of partnership; and

- A (b) Whether the plaintiff gave sufficient oral and/or written notice of withdrawal or retirement to the fourth defendant or alternatively whether the plaintiff is liable as a partner to the fourth defendant under the equipment lease agreement dated 28 November 1985.

In respect of issue (a) the learned counsel for the plaintiff submits that the registration as a partner under the Sarawak Business Names Ordinance is not conclusive proof of partnership but is evidence of prima facie proof of partnership only. In support of that the learned counsel cited the cases of *Murray v David* [1930] SSLR 229; *CA Teo Tong v Lim Eng Tiong & Anor* [1980] 4 SLJ 46 and *Sivagami Achi v PRM Ramanathan Chettiar & Anor* [1959] MLJ 221. The learned counsel for the plaintiff therefore argues that

- C the fact that no formal documents were drawn up, executed and lodged with the Registrar of Business Names that the plaintiff had withdrawn or retired from the partnership as on 13 November 1985 based on the oral agreement between the partners then does not mean that the plaintiff continued to be a partner.

- D In respect of that the learned counsel for the fourth defendant submits that the fourth defendant is entitled to rely on the register when it had not received a fresh notice of change or fresh business extract from the plaintiff that his name as a partner had been deleted from the Business Names Register. In support of that the fourth defendant cited *Tan Sin Moh v Lebel Ltd* [1988] 2 MLJ 51; *Re Chop Yew Seong; ex p Sri Sundari Palayakat Co*

- E [1958] 2 MLJ 239 and s 9 of the Sarawak Business Names Ordinance.

In *Tan Sin Moh v Lebel Ltd* the appellant alleged that the judgment entered against him was wrong in law because the claim of the respondent contained a material error in respect of the registered particulars in the Registry of Business. The appellant alleged that he had withdrawn from the partnership on 1 February 1976 but the withdrawal was wrongly registered as being on 23 August 1978. The Supreme Court held that the respondent was entitled under s 6 of the Registration of Businesses Act 1956 to rely on particulars kept in the Business Registry to ascertain whether the appellant remained a partner of the firm at the commencement of the suit.

- F In *Re Chop Yew Seong*, Rigby J has this to say in respect of the particulars of the business registered with the Registrar of Business at p 240 of the report:

- H But whatever may have been the intention of the partners as between themselves as to their retirement from the firm and the continuance by Yeow Yew Wah as the sole partner, what then was the position of those who continued to deal with the firm without knowledge of any alteration in its status? It is clear to the outside world that the partners remained as shown in the particulars of the business registered with the Registrar of Businesses, and persons dealing with the firm were entitled to act upon the assumption that those particulars were correct unless and until they received express notice to the contrary.

- I In his affidavit, PW5 has stated that the processing and approval of the loan to the first defendant was based on the credit standing of the first defendant and the business extract as shown in exh MSHC-1 to the plaintiff's

affidavit. Under cross-examination by Mr Dominic Lai he stated that there was no other business extract in respect of the first defendant given to him.

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As far as the persons outside the partnership are concerned I agree with the views stated in the two cases just cited that they are entitled to act upon the assumption that the particulars in the Business Registry are correct unless and until they receive express notice to the contrary. Whatever agreement or arrangement made by the partners between themselves are merely an internal arrangement and they cannot bind the persons from outside the firm who are dealing with the firm and are relying on the Business Registry except in cases where those persons have been expressly informed of the changes by the firm or any one of the partners. It is important that the sanctity of business register in the Business Names Registry be upheld in the interest of business efficacy.

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The next issue for determination is whether the plaintiff gave sufficient oral and/or written notice of his retirement to the fourth defendant. The learned counsel for the plaintiff submits that the evidence of the plaintiff adduced in court and which are conceded and/or admitted by PW5, Henry Tiong Teck Wong, the Miri branch manager of the fourth defendant show beyond a shadow of doubt that oral notice was given and/or actual notice of the withdrawal or retirement of the plaintiff was given or known to the fourth defendant at least a week before the execution date of the said equipment lease agreement when PW5 instructed the plaintiff to write to him in black and white and which the plaintiff did vide exh P1 dated 26 November 1985 which the said letter was served on the fourth defendant by the plaintiff himself. The learned counsel for the plaintiff therefore submits that the plaintiff is not liable to the fourth defendant under the said lease agreement and the fourth defendant also ought to have known that the plaintiff is not liable to them when they instituted execution on the bankruptcy proceedings against the plaintiff in 1992 in their claim against the first defendant under the said equipment lease agreement.

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In this connection the learned counsel for the fourth defendant submits that the plaintiff relied on two letters written by him to support his contention that he had given notice of retirement to the fourth defendant, namely:

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(a) letter dated 20 January 1986 which is at p 23 of Bundle C; and

(b) letter dated 26 November 1985 which is marked as exh P1.

According to the learned counsel for the fourth defendant the letter dated 20 January 1986 was a general letter that was not addressed to the fourth defendant in particular and the letter said he had retired from the first defendant with effect from 13 August 1985, contrary to the declaration sought by him that he had retired with effect from 13 November 1985, a difference of three months. It is the contention of the learned counsel for the fourth defendant that by virtue of s 38(1) of the Partnership Act 1961 the fourth defendant is entitled to treat the plaintiff as still an apparent member of the first defendant as the said letter was issued subsequent to the

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- A said lease agreement and the plaintiff had failed to show that the said letter had been duly served on the fourth defendant.

B In respect of exh P1, the learned counsel for the fourth defendant submits that it would not constitute a sufficient notice of retirement by the plaintiff from the first defendant as the plaintiff had not adduced evidence to prove service. Further it was not accompanied with a business extract as required by the fourth defendant. The learned counsel further argues that exh P1 referred to a separate lease agreement and different lease items altogether. In addition exh P1 which was purportedly issued only two days before the said lease agreement was prefixed with the sentence 'I will be retiring from the above partnership soon'. It therefore does not constitute an unequivocal notice that the plaintiff had retired from the first defendant. C It is also submitted by the learned counsel for the fourth defendant that even if the plaintiff had retired from the first defendant partnership, he continued to be liable for the debt due to the fourth defendant as at the time of the creation of the debt by the said lease agreement the plaintiff was still a partner in the first defendant partnership.

- D I will deal first with the submission by the learned counsel for the plaintiff that oral evidence has been given to PW5 by the plaintiff of his retirement from the first defendant.

In paras 18 and 19 of his affidavit in support, the plaintiff states that:

- E (18) The fourth defendant had full and adequate knowledge of my retirement from the said partnership of the first defendant because a week before the date of execution of the lease agreement between the fourth and first defendants dated 28 November 1985 the manager of the fourth defendant, Henry Tiong Teck Wong, telephoned me to set up an appointment with him in his office to sign the said lease agreement. By reasons of the matters aforesaid I refused to sign and/ F or execute the said lease agreement as requested.

- (19) In the circumstances the said Henry Tiong Teck Wong directed me to write a letter to the effect that I had retired from the said partnership of the first defendant and to pass the letter to him.

- G PW5 in his affidavit denied that the plaintiff has represented to him at the time the said equipment lease agreement was signed between the parties concerned that the plaintiff had in fact retired from the partnership of the first defendant. In his evidence PW5 stated that he was not sure about the plaintiff's allegation in para 18 of the affidavit in support as to whether the notice was given to him verbally before or after the signing of the lease agreement. In respect of para 19 of the plaintiff's affidavit PW5 stated that H he think after the plaintiff informed him he did ask the plaintiff to inform him in writing.

- I It is my view that there is no evidence to support the plaintiff's allegation that he has given a verbal notice to PW5 of his retirement from the partnership before the signing of the said equipment lease agreement. In exh P1 which was purportedly sent by the plaintiff after he informed PW5 that there was no reference made about the conversation he had with PW5.

In addition in exh P1 which is dated 26 November 1985 he merely stated that he would be retiring from the partnership. This means that as on 26 November 1985 he had not yet retired as a partner in the first defendant firm.

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In any event, I am of the view that a verbal notice does not constitute a sufficient notice to the fourth defendant as the fourth defendant is a company and financial institution. Any notice given to the fourth defendant must be in writing.

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As regards the letter dated 26 November 1985, ie exh P1 the plaintiff testified that the letter was written to the fourth defendant to inform them that he has retired from the first defendant partnership and he also stated that a copy of the letter was given to PW2. However in para 23 of his affidavit he stated that on or about 20 January 1986 he wrote a letter to both the fourth defendant and Bank Bumiputra Malaysia Bhd, Miri informing them that he had retired from the partnership of the first defendant.

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PW5 in his evidence stated that he might have received exh P1 and the letter dated 20 January 1986. Under cross-examination PW5 stated that even if he received these letters it would not be acceptable to the Bank as a change in the partnership of the firm. According to him the notice should be accompanied by a new business extract of the first defendant partnership showing the change in the partners of the firm. Throughout his testimony he reiterated that the fourth defendant acted only on documents and as far as the loan to the first defendant was concerned the fourth defendant relied on the business extract.

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I agree with the learned counsel for the fourth defendant that exh P1 does not constitute an unequivocal notice that the plaintiff had retired from the defendant. The plaintiff merely stated in the letter that he would be retiring from the partnership. Therefore even assuming that exh P1 was properly served on PW5 it could not absolve the plaintiff from the first defendant's liability. As far as exh P1 is concerned the plaintiff was still the registered partner of the first defendant. In addition his share in the first defendant partnership has not been transferred to the other partners until today. Therefore when the said lease agreement was signed the fourth defendant had not been informed by the plaintiff that he had ceased to be the partner of the first defendant partnership. By virtue of s 38(1) of the Partnership Act 1961 the fourth defendant was entitled to treat the plaintiff as still being members of the firm because exh P1 cannot be regarded as notice of the change in the first defendant's constitution. It merely informed PW5 that there would be a change in the first defendant constitution soon. In addition I am of the view that the notice of change must be accompanied by a new Business Extract showing the changes because PW5 had stated in his evidence clearly that the fourth defendant, being a financial institution, acted only on documents. Furthermore it is clear from the evidence that as at the date of the signing of the said equipment lease agreement the plaintiff was still holding his share in the first defendant and therefore he was a partner at that time. Under s 11 of the Partnership Act 1961, every partner

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A in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner.

As regards the letter dated 20 January 1986 it was issued after the signing of the said equipment lease agreement and as such it does not affect the plaintiff's liability under the said equipment lease agreement.

B For the reasons stated above I hold that the plaintiff is not entitled to the declaration and other reliefs he is seeking for in this action. This action is therefore dismissed with costs to the defendants to be taxed unless agreed upon.

Order accordingly.

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Reported by Jafisah Jaafar

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